

2 UNITED STATES BANKRUPTCY COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK

4 In re: : Chapter 11
5 RESIDENTIAL CAPITAL, LLC, : Case No. 12-12020(MG)
et al., : Jointly Administered
6 Debtors. :

7 RESIDENTIAL CAPITAL, LLC, :
et al., :

8 Plaintiffs, :

vs. : Adversary Proceeding

9 UMB BANK, N.A., as successor : No. 13-01343(MG)

indenture trustee under that :

certain indenture, dated as :

of June 6, 2008; and WELLS :

10 FARGO BANK, N.A., third : Yellow Highlighting = JSN Designations

priority collateral agent and:

11 collateral control agent :

under that certain Amended :

12 and Restated Third Priority :

Pledge and Security Agreement:

13 and Irrevocable Proxy, dated :

as of December 30, 2009, :

14 Defendants. :

Pink Highlighting = Plaintiff's designation
or counter-designation

Orange Highlighting = Joint Designations

The Debtors and Committee object to the
JSNs' use of the deposition of Mr. Aretakis on
the ground that this deposition may not be
used under Bankruptcy Rule 7032.

15 OFFICIAL COMMITTEE OF :
16 UNSECURED CREDITORS, on :
behalf of the estates of the :
17 Debtors, :

The Debtors' counter-designations reflected
herein are to be admitted, if at all, only upon
admission of the JSNs' corresponding
affirmative designation.

Plaintiff, :

vs. : Adversary Proceeding

18 UMB BANK, N.A., as successor : No. 13-01277(MG)

indenture trustee under that :

19 certain Indenture, dated as :

of June 6, 2008; and WELLS :

20 FARGO BANK, N.A. third : VIDEOTAPED DEPOSITION

priority collateral agent : OF

21 collateral control agent : JAMES ARETAKIS

under that certain Amended : New York, New York

22 and Restated Third Priority : November 6, 2013

Pledge and Security Agreement:

23 and Irrevocable Proxy, dated :

as of December 30, 2009, :

24 Defendants. :

Reported by: JENNIFER MILLER Job No. 67548

Page 2

1 JAMES ARETAKIS
2 November 6, 2013
3 2:13 p.m.
4
5 Videotape deposition of JAMES ARETAKIS, held at
6 Kirkland & Ellis, LLP, 601 Lexington Avenue, New
7 York, New York, before Jennifer Miller, a
8 Registered Professional Reporter and Notary Public
9 of the Commonwealth of Pennsylvania.

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25

1 JAMES ARETAKIS

2 A P P E A R A N C E S:

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6 Counsel for the Debtors

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8 KRAMER LEVIN NAFTALIS & FRANKEL
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11 Counsel for the Committee of Unsecured
Creditors

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19 Counsel for the Ad Hoc Committee of Junior
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25 Counsel for Ally Financial, Inc.

1 JAMES ARETAKIS

2 A P P E A R A N C E S: (cont'd)

3 ALLY FINANCIAL

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6 Counsel for Ally Financial, Inc.

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8 ALSTON & BIRD

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9 90 Park Avenue

New York, NY 10016

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11 Counsel for Wells Fargo Bank as Trustee

12

13 KELLEY DRYE & WARREN

TIMOTHY MARTIN, ESQUIRE (Via Telephone)

14 101 Park Avenue

New York, NY 10178

15

16 Counsel for UMB Bank, N.A.

17

18

19 ALSO PRESENT: Dale Swindell, Legal Video Specialist

20

21

22

23

24

25

1 JAMES ARETAKIS

2 - - -

3 P R O C E E D I N G S

4 - - -

5 THE VIDEOGRAPHER: This is the start of
6 media labeled number one. This is the tape
7 deposition of Mr. James Aretakis in the matter
8 of In re: Residential Capital, LLC.

9 This deposition is being held at 601
10 Lexington Avenue, New York, New York on
11 November 6th 2013 at approximately 2:13 p.m.

12 My name is Dale Swindell from TSG
13 Reporting, Incorporated. I'm the certified
14 legal video specialist. The Court Reporter is
15 Jennifer Miller in association with TSG
16 Reporting. Counsel will be noted on the court
17 reporter's record.

18 Would the Court Reporter please swear in
19 the witness.

20 - - -

21 JAMES ARETAKIS, after
22 having been first duly sworn, was
23 examined and testified as follows:

24 - - -

25 E X A M I N A T I O N

1 JAMES ARETAKIS

2 - - -

3 BY MR. PERRY:

4 Q. Good afternoon, Mr. Aretakis.

5 A. Good afternoon.

6 Q. My name is Dan Perry. I represent Ad Hoc
7 Group of Junior Secured Noteholders in the ResCap
8 bankruptcy.

9 Have you ever been deposed before,
10 sir?

11 A. No.

12 Q. Just some -- I understand you're an
13 attorney; is that correct?

14 A. That's correct.

15 Q. Just some ground rules on depositions.

16 You understand you're under oath and
17 sworn to tell the truth the same as if you were
18 appearing in a court of law, correct?

19 A. Correct.

20 Q. The Court Reporter is taking down
21 everything I say to you and you say to me. She's
22 able to do that only if we don't talk over each
23 other at the same time so I'd ask for you to wait
24 until I'd done with my question and I will extend
25 you the same courtesy.

1 JAMES ARETAKIS

2 THE VIDEOGRAPHER: The time is 2:15. We
3 are going off the record.

4 - - -

5 (Whereupon, a short recess
6 was taken.)

7 - - -

8 THE VIDEOGRAPHER: The time is 2:17 p.m.
9 We're back on the record.

10 BY MR. PERRY:

11 Q. Before we broke, I was explaining we ought
12 to try not to talk over each other. I'm going to
13 wait for you to finish your answer. Please wait for
14 me to finish my questions.

15 If you have any questions or my
16 questions are unclear to you, please let me know.
17 My sense is given the topic that we're here today to
18 talk about there may be some of that. So please
19 don't hesitate, if I'm asking a question a way
20 that's unclear to you, to ask me to clarify it, and
21 I'll do my best to do it.

22 You're entitled to consult with your
23 attorney of course throughout the deposition.
24 Particularly, to the extent that one of my questions
25 you think may call for you to disclose privileged

1 JAMES ARETAKIS

2 information, you can take your time and confer with
3 Mr. McKane about that.

4 You're otherwise entitled to take as
5 many breaks as you feel the need to take. This is
6 not an endurance contest. The only thing I'd ask is
7 that you just finish a pending question before you
8 do that.

9 Do you have any questions before we
10 start?

11 A. No, I'm ready.

12 Q. Can you give me your educational history.

13 A. BA in Accounting from Michigan State. JD
14 from Michigan. I'm a licensed attorney in the State
15 of Michigan.

16 Q. What year did you receive your accounting
17 degree?

18 A. '78.

19 Q. And your law degree?

20 A. '82.

21 Q. And can you give me a brief overview of
22 your employment history starting post law school.

23 A. A couple of years with Coopers & Lybrand,
24 public accounting firm in Detroit, now PWC. After
25 that, 22 years with General Motors tax staff and

1 JAMES ARETAKIS

² with the GMAC, now Ally, tax department beginning in
³ 2006.

4 Q. Are you still employed by Ally today?

5 A. Yes.

6 Q. What's your position at Ally?

A. General tax counsel.

8 Q. And is your role an attorney's role with
9 Ally?

10 A. Yes.

11 Q. And what was your position prior to
12 assuming the position of general tax counselor at
13 Ally?

14 A. For three years prior to this summer, I
15 was chief tax officer, and prior to that, I also had
16 the general tax counsel position.

17 Q. So when did you first become general tax
18 counsel?

A. In 2006.

20 Q. And then did that -- it was a little
21 unclear from your testimony. Did that position
22 change to become chief tax officer or did you just
23 assume the chief tax officer duties?

24 A. I assumed the chief tax officer duties for
25 three years.

1 JAMES ARETAKIS

2 Q. Okay. And when were you the chief tax
3 officer?

4 A. From mid-2010 to the middle of this year.

5 Q. And does anybody within Ally now hold the
6 title chief tax officer?

7 A. Yes.

8 Q. And who's that?

9 A. Jay Frucci, F-R-U-C-C-I.

10 Q. And who does Mr. Frucci report to?

11 A. The controller, David DeBrunner.

12 Q. And who do you report to?

13 A. I report to Mr. Frucci.

14 Q. And prior to Mr. Frucci assuming the role
15 of chief tax officer, who did you report to?

16 A. David DeBrunner.

17 Q. Other than a law license, do you hold any
18 other professional licenses?

19 A. I was a CPA, but I am inactive. I don't
20 maintain the continuing professional education
21 requirement, so I don't hold myself out as a CPA any
22 longer.

23 Q. And when did you become inactive as a CPA?

24 A. Many years ago.

25 - - -

1 JAMES ARETAKIS

2 (Whereupon, Exhibit 1 was

3 marked for identification.)

4 - - -

5 BY MR. PERRY:

6 Q. Mr. Aretakis, the Court Reporter has just
7 handed you Aretakis Deposition Exhibit 1. It's a
8 Notice of Subpoena from the Ad Hoc Group of Junior
9 Secured Noteholders to Ally Financial, Inc.

10 My understanding, sir, is that you've
11 been designated to give testimony on behalf of Ally
12 Financial, Inc. with respect to deposition topics
13 six and 14, which are set forth on page 78 of the
14 notice.

15 Is that consistent with your
16 understanding?

17 MR. MCKANE: Subject to our objections and
18 responses.

19 THE WITNESS: I'm sorry, items number?

20 MR. MCKANE: Six and 14.

21 BY MR. PERRY:

22 Q. Six and 14.

23 A. Yes, that's my understanding.

24 Q. And did you do anything to prepare to give
25 testimony on behalf of Ally Financial with respect

1 JAMES ARETAKIS

2 to items six and 14?

3 A. Yes.

4 Q. What did you do?

5 A. I reviewed documents, financial
6 statements, generally brushed up on my recollection,
7 discussed the matter with other members of the tax
8 staff in the office, and I discussed it with
9 counsel.

10 Q. And what documents and financial
11 statements did you review in preparation for your
12 testimony?

13 A. I reviewed the 10-K for the period ending
14 December 31, 2012, and I reviewed some memoranda
15 that were prepared describing the book and tax
16 treatment of the proposed settlement amount.

17 I also asked and received an
18 explanatory schedule to give me a little more detail
19 on the numbers that appeared on the 10-K.

20 Q. So, just so I have it straight, you recall
21 reviewing the 2012 10-K, correct?

22 A. Correct.

23 Q. Memoranda prepared describing the book and
24 tax treatment of the settlement in the Res Cap
25 bankruptcy, correct?

Plaintiffs' objection to JSNs' counter-designation

of 12:10-14:21: Beyond the scope of affirmative designation; irrelevant (FRE 401, 402)

1 JAMES ARETAKIS

2 A. Correct.

3 Q. Was that more than one memo?

4 A. Two memos.

5 Q. Two memos. And you asked that a schedule
6 be prepared as well, correct?

7 A. Correct.

8 Q. Any other documents that you recall
9 reviewing in connection with getting prepared for
10 your testimony?

11 MR. MCKANE: Testimony on these two
12 topics?

13 BY MR. PERRY:

14 Q. On these topics.

15 A. There may have been some attachments maybe
16 or other schedules, some emails.

17 Q. When you say "attachments," are these
18 attachments to the memoranda or to something else?

19 A. To the memoranda.

20 Q. And what emails do you recall reviewing?

21 A. I can't recall anything specific, but I
22 may have looked at some -- some correspondence
23 between me and other members of the tax staff.

24 Q. Now, you also indicated that you had
25 discussions with some members of the tax staff --

1

JAMES ARETAKIS

2

A. Uh-hum.

3

Q. -- in connection with your testimony?

4

A. That's correct.

5

Q. Who did you -- who did you talk to on the
tax staff?

6

A. Most significantly, Kip Cotter,
C-O-T-T-E-R. Kip is an executive director in the
tax staff, and he is primarily responsible for tax
accounting matters.

7

Q. And did Mr. Cotter have any responsibility
for tax accounting matters with respect to the Res
Cap bankruptcy and settlement?

8

A. Yes.

9

Q. Does Mr. Cotter report to you?

10

A. No, he reports to Mr. Frucci.

11

Q. Anybody else that you can recall having
meaningful dialogue with on the tax staff?

12

A. Some general dialogue with Mr. Frucci and
some -- some dialogue with Mr. Sean Rohlig,
R-O-H-L-I-G, who prepared that schedule.

13

Q. You indicated that you had -- you met with
counsel?

14

A. Yes.

15

Q. Without going into the substance of that

1 JAMES ARETAKIS

2 meeting, who -- who was the counsel that you met
3 with?

4 A. Mr. McKane.

5 Q. Anybody else there at the meeting?

6 A. Yeah, Ms. Dennis and Ms. Allen.

7 Q. About how long did you meet with counsel?

8 A. A couple of hours.

9 Q. And when did you meet?

10 A. Today.

11 Q. Other than the meeting today, did you have
12 any other meetings with counsel?

13 A. Yeah, we had some phone calls.

14 Q. And other than the three people that you
15 identified earlier, was anybody else on those calls?

16 A. No.

17 - - -

18 (Whereupon, Exhibit 2 was Plaintiff's Objection
19 marked for identification.) 015:18 – 19
Irrelevant (FRE 401,
402), inadmissible
hearsay (FRE 802)

20 - - -
21 BY MR. PERRY:

22 Q. Before you is Aretakis Exhibit No. 2.
23 - - -

24 (Whereupon, a short recess
25 was taken.)

1 JAMES ARETAKIS

2 - - -

3 THE VIDEOGRAPHER: The time is 2:34. We
4 are back on the record.

5 BY MR. PERRY:

6 Q. Can you identify Aretakis Deposition Plaintiff's
7 Exhibit 2? Objection
016:06 –
017:15

8 A. Yes, this is the schedule prepared by Irrelevant
9 Mr. Rohlig. (FRE 401,
402),

10 Q. And can you describe generally what the inadmissible
11 schedule reflects? hearsay (FRE
802)

12 A. The schedule reflects a deferred tax assets and deferred tax liabilities as they appear on the Ally consolidated 10-K for the year end 2012, and provide some additional details regarding those amounts.

17 Q. There's -- for the deferred tax assets, there's a column that is entitled ResCap. Can you explain what that column signifies?

20 A. Yes. Those are the hypothetical ResCap deferred tax assets that would exist if ResCap were a separate standalone taxpayer, which it is not.

23 Q. And the numbers that are reflected in the ResCap column, are those tax effected numbers?

25 A. Yes.

1 JAMES ARETAKIS

2 Q. And what is the -- what number is used to
3 make -- strike that.

4 What percentage are you applying to
5 come up with the tax effected numbers?

6 A. Thirty-five percent.

7 Q. So the -- as I understand it, as of
8 December 31st 2012, the number reflected for ResCap
9 ordinary tax loss carry forward is 520 million; is
10 that correct?

11 A. That's correct.

12 Q. And the tax effected number four ResCap
13 capital tax loss carried forward is 571 million,
14 correct?

15 A. That's correct.

16 Q. There's several other numbers that are
17 listed in the ResCap column. I'd like to go through
18 them with you.

19 The next one is mark to market on
20 consumer finance receivables and loans, and the tax
21 effected number is 55 million. Do you know what
22 that line item mark to market on consumer finance
23 receivables and loans reflects?

24 A. I know that for tax purposes some loans
25 are mark to market, and for purposes some loans are

1 JAMES ARETAKIS

2 mark to market and they're not always the same, and
3 this would be the difference between the two tax
4 effected.

5 Q. Okay. And why is the difference between
6 the two a tax -- a deferred tax asset?

7 A. Because our tax basis in an asset would be
8 higher than a book basis.

9 Q. I see. Okay. And there's a \$268 million
10 number, I believe it's provision for loan losses?

11 A. That's correct.

12 Q. What does that provision for loan losses
13 line item reflect?

14 A. For book accounting purposes, an
15 expense -- a liability -- a contrast that could be
16 recorded for the expected losses on those loans.

17 Q. Okay.

18 A. That is not a good tax deduction, so it
19 creates a deferred tax asset.

20 Q. I see. And so, at the point in time when
21 the loan losses became actual losses as opposed to
22 just expected losses, would they be reclassified on
23 this sheet to -- to be in some other line item?

24 A. The deferred would come down for provision
25 for loan losses, and it would be reflected

1 JAMES ARETAKIS

2 elsewhere, maybe not on the schedule.

3 If it resulted in an actual decrease
4 in the tax liability, then it wouldn't be on your
5 deferred.

6 Q. Right.

7 A. So it depends upon when it reduces and
8 whether or not we're still in an overall net
9 operating loss carry forward position.

10 It would likely, while we are in it
11 in a well carried forward position, it would be
12 reclassified to the other line item.

13 Q. I see. So it could be used as an NOL at
14 the point in time when the loss become -- when the
15 loss becomes an actual as opposed to expected,
16 correct?

17 A. That's correct.

18 Q. There's a \$126 million line item under
19 mortgage servicing rights. What is that?

20 A. This was an adjustment -- reflects an
21 adjustment that was made when Ally was a partnership
22 for tax purposes.

23 And under 743B, tax counsel will
24 understand, there was certain adjustments made to
25 the basis of our assets. When a new partner comes

1 JAMES ARETAKIS

2 in and we adjust the basis because of this
3 partnership-type transaction, and our basis and our
4 mortgage servicing rights, it exceeds the basis for
5 book purpose.

6 Q. Why is that a deferred tax asset?

7 A. Because it's a difference in basis that's
8 reflected between book and tax -- gets reflected in
9 that way.

10 Q. And there's also a category for other that
11 it's \$183 million. Do you have a sense of what
12 makes up that other category at least with respect
13 to ResCap?

14 A. In general, I believe there's other basis
15 difference between book and tax with respect to
16 assets.

17 Q. There's the gross deferred tax assets in
18 the ResCap column are total that 1.724; do you see
19 that?

20 A. Yes.

21 Q. And below that there's a valuation
22 allowance of 649 million. Can you explain what the
23 valuation allowance is?

24 A. We have valuation allowance as of the end
25 of the year with respect to certain DTA's, the

Plaintiff's
Objection
20:17 -
22:13
Irrelevant
(FRE 401,
402)

1 JAMES ARETAKIS

2 utilization of which is not certain. In particular,
3 capital losses are VA'd because they have a short
4 carry forward period and can only be used against
5 capital gains.

6 Q. When you say VA, do you mean --

7 A. Valuation allowance.

8 Q. And do you have an understanding of why
9 the valuation allowance would exceed the amount of
10 the capital tax loss carried forward?

11 A. Yes.

12 Q. Why is that?

13 A. In addition to the capital loss carry
14 forward, we had valuation allowance against certain
15 NOL carry forwards that were subject to what they
16 call the SRLY limitations, separate year -- separate
17 return limitation year. It's a tax acronym.

18 But it's -- these are losses that
19 can't be used -- utilization which is very limited,
20 so they were subject to valuation allowance.

21 And there were also some assets where
22 we had a basis difference, and they were capital
23 assets, so that basis difference would likewise be
24 subject to valuation allowance like the other
25 capital losses.

1 JAMES ARETAKIS

2 Q. And is it -- does the allowance for
3 capital tax loss carry forwards, is it a
4 dollar-for-dollar allowance or is it some percentage
5 of the capital tax loss carried forward that's VA'd?

6 A. Dollar for dollar.

7 Q. And do you know whether any -- whether
8 Ally expects to use any of the ResCap capital tax
9 loss carried forwards in 2013?

10 MR. MCKANE: Objection to form.

11 You can answer.

12 THE WITNESS: I expect that we will use a (FRE 802)
13 substantial amount.

14 BY MR. PERRY:

15 Q. Can you give an estimate in terms of the
16 amount?

17 A. I really don't know the amount, but I know
18 we've had certain transactions in 2013 and expect
19 others in '14 that will generate capital gains.

20 Q. And do you -- are you able to estimate as Plaintiff's
21 you sit here today how much of the 500 -- and I'm Objection
22 just looking for an estimate, not a precise
23 number -- how much of the \$571 million capital tax
24 loss carry forward will be used in 2013 or '14? Lack of
25 (FRE 802)

A. Over the two years together, probably all

1 JAMES ARETAKIS

2 of it.

Plaintiff's Objection
23:4-5: Inadmissible
hearsay and double
hearsay (FRE 802),
irrelevant (FRE 401,
402), unduly
prejudicial (FRE
403), lack of personal
knowledge (FRE
602), lack of
foundation (FRE 602,
901, 903), incomplete
(FRE 106)

3 - - -

4 (Whereupon, Exhibit 3 was
5 marked for identification.)

6 - - -

7 BY MR. PERRY:

8 Q. Before you, Mr. Aretakis, is Aretakis
9 Deposition Exhibit 3. It's an excerpt of the report
10 of Arthur Gonzales as the examiner in the ResCap
11 bankruptcy.

12 I'm particularly interested in the
13 table, which is reflected in footnote 1812, which is
14 on page V344 of the exhibit. Just directing your
15 attention to the ResCap, the third -- the text under
16 amount of ResCap tax benefits available for AFI's
17 use, there's a line item for ResCap NOL's generated
18 between November 2009 and December 2012, and the
19 number is 1.444.

20 First of all, do you know where that
21 number came from?

22 A. No, I do not.

23 Q. Do you know whether that's a tax effected
24 number or non-tax effected as you sit here?

25 A. I would think it is not tax effected.

1 JAMES ARETAKIS

2 Q. And there's a line item ResCap capital
3 losses generated between November 2009 and December
4 of 2012 for 1.629 billion.

5 A. Uh-hum.

6 Q. Do you know where the 1.629 billion number
7 came from?

8 A. I do not know.

9 Q. And is it your belief that the 1.629
10 number is similarly not tax effected?

11 A. Correct.

12 - - -

13 (Whereupon, Exhibit 4 was
14 marked for identification.)

15 - - -

16 BY MR. PERRY:

17 Q. So you'll see in the text of Aretakis
18 Exhibit 3, the text of footnote 1812, there's a
19 citation for the 1.444 billion and 1.629 billion
20 numbers that we've been looking at, and it reflects
21 or cites to a schedule prepared -- purportedly
22 prepared by AFI.

23 It has a Bates number there which is
24 a number that litigators use to identify documents
25 produced in litigation. And I'm going to show you

Plaintiff's Objection
024:13-14

Inadmissible hearsay
(FRE 802), irrelevant
(FRE 401, 402), lack of
personal knowledge (FRE
602), lack of foundation
(FRE 602, 901, 903)

Plaintiffs
Objection
024:17 –
025:04

Inadmissible
hearsay (FRE
802),
irrelevant
(FRE 401,
402), unduly
prejudicial
(FRE 403),
lack of
personal
knowledge
(FRE 602),
lack of
foundation
(FRE 602,
901, 903),
incomplete
(FRE 106)

1 JAMES ARETAKIS

2 as Aretakis Exhibit 4, the document cited to in
3 footnote 1812.

4 A. Uh-hum.

5 Q. Do you know what this schedule is?

6 A. I don't recognize the schedule.

7 Q. Is the form of the document something
8 that's familiar to you?

9 A. I could make sense of it, but I don't
10 routinely use a document that looks like this.

11 Q. And I take it by looking at the document,
12 you don't know who prepared the document or where
13 within AFI it was prepared, correct?

JSN
Objection
25:11-21
Irrelevant
(FRE 401,
402)

14 A. That's correct. I can only guess.

15 Q. Okay. And are you able -- just focusing
16 on the network net operating loss figures set forth
17 in the first page of Aretakis Deposition Exhibit 4,
18 are you able to tie those figures back to footnote
19 1812?

20 A. It's not jumping off the page at me,
21 Counselor.

22 Q. Well, if you -- so, if you take under net
23 operating loss, if you take the line item 11/2/09 to
24 12/31/09 and then 2010 and '11 and you add them up
25 and then add to that the projected number for 2012,

1 JAMES ARETAKIS

² I believe you get to 1.444.

3 Is that -- I mean, I know I'm asking JSON
Objection

4 you to do math based on somebody else's schedule, 26:3-8
Irrelevant

5 and I would concede it's unfair. I'm just trying to (FRE 401,
402)

6 make sure that --

7 MR. MCKANE: I appreciate you saving me
8 the objection.

9 BY MR. PERRY:

10 Q. The examiners that -- the calculation that
11 the examiner did makes sense to you in reviewing
12 this schedule?

13 MR. MCKANE: Let me just ask are you
14 asking him to look at the first net operating
15 loss calculation including -- including income
16 or the second net operating loss calculation?

17 There's two on the page.

18 MR. PERRY: The second.

19 THE WITNESS: Thank you. Okay.

20 MR. MCKANE: And just to be clear, are you
21 asking him to sum the numbers that start 823
22 million and 559 million?

23 MR. PERRY: Well, no.

24 BY MR. PERRY:

25 Q. You know, you're not here to do math,

1 JAMES ARETAKIS
2 obviously. I just want to make sure, you know, to
3 the extent one wanted to use this schedule to
4 determine at least as of the time the schedule was
5 prepared what the ResCap net operating losses were
6 between November of 2009 and December of 2012, would
7 one simply add the four line items that I identified
8 earlier?

9 MR. MCKANE: Objection to form.

¹⁰ Foundation. Calls for speculation.

11 Go ahead.

12 THE WITNESS: It would seem reasonable,
13 but I can't -- I can't state so.

14 BY MR. PERRY:

15 Q. Okay. But you at least in preparation for
16 your deposition, directed and supervised members of
17 the tax staff to actually prepare the net operating
18 losses for ResCap up through and including
19 December 31st 2012, correct?

20 A. I'm sorry, I didn't understand the
21 question.

22 Q. Okay. If -- going back to Aretakis
23 Deposition Exhibit 2

24 A Okay

25 Q. What line items would I use if I wanted to

1 JAMES ARETAKIS

2 come up with a total for ResCap NOL's generated up
3 through -- as of December 31st 2012?

4 MR. MCKANE: Objection to form.

5 THE WITNESS: That would be very difficult
6 to do.

7 This is book accounting, Exhibit 2?

8 BY MR. PERRY:

9 Q. Uh-hum.

10 A. And I believe what you're describing in
11 Exhibit 4 are taxable income numbers.

12 Q. Uh-hum.

13 A. The book accounting only describes the
14 deferred item, and the taxable income number comes
15 off a tax return.

16 Q. I see. So how would the deferred --

JSN Objection
28:16-29:7
Irrelevant (FRE
401, 402)

17 strike that.

18 If I wanted to compare the deferred
19 item set forth on Aretakis Schedule 2 and the
20 taxable income numbers set forth in footnote 1812,
21 what are the differences in those two that -- the
22 items that make up the two figures on those two
23 schedules?

24 MR. MCKANE: Objection to form.

25 Foundation. Vague. Overbroad.

1 JAMES ARETAKIS

2 Go ahead.

3 THE WITNESS: Okay. Again, it appears
4 footnote 1812 are tax return numbers and
5 Exhibit 2 are book accounting numbers. I'm not
6 sure how to compare them to make any sense of
7 that comparison.

8 BY MR. PERRY:

9 Q. Okay. So it wouldn't be as simple as
10 simply grossing up the tax effected numbers to a
11 number and then translating them into the -- the
12 numbers that appear in footnote 1812; is that your
13 testimony?

14 A. That would not be a one-to-one comparison,
15 no.

16 Q. If -- would there be items included in the
17 deferred tax assets -- well, strike that.

18 What items in the deferred tax assets
19 would not be listed on the -- on the tax -- the tax
20 returns?

21 A. Certainly, any difference between book
22 income and tax income there is a permanent
23 difference.

24 Q. Uh-hum.

25 A. Otherwise, it's in there.

1 JAMES ARETAKIS

2 Q. Okay. And are you aware of any permanent
3 differences between book income and tax income for
4 ResCap?

5 MR. MCKANE: Objection to form.

6 THE WITNESS: For example, something that
7 creates a permanent difference is perhaps a --
8 as an example, a book expense that is
9 deductible for tax purposes.

10 Attorneys fees paid in the bankruptcy case
11 are not deductible for tax purposes. That's a
12 permanent difference.

13 BY MR. PERRY:

14 Q. Are you able to estimate the size of any
15 permanent differences between book income and tax
16 income for ResCap?

17 A. I know that the consolidated number
18 appears in our 10-K.

19 Q. And where would I look in the 10-K for the
20 consolidated number?

21 A. In note 23, income taxes.

22 - - -

23 (Whereupon, Exhibit 5 was
24 marked for identification.)

25 - - -

1 JAMES ARETAKIS

2 BY MR. PERRY:

3 Q. Before you is Aretakis Deposition Exhibit
4 5. It's an excerpt of Ally's 2012 10-K, and we
5 fortunately for us excerpted note number three.

6 Are you able to identify based on
7 your review of note 23 the difference between -- the
8 permanent difference between tax and book accounting
9 that we've just been discussing?

10 A. Page 171, line item near the bottom,
11 nondeductible expenses, would capture those
12 bankruptcy attorneys fees that I just described.

13 Q. Okay. If you go back to the analysis in
14 footnote 1812, do you -- generally speaking, do you
15 have an understanding of what the table is trying to
16 portray in footnote 1812?

17 A. I have a general understanding.

18 Q. Can you describe that understanding?

19 A. The heading is amount of ResCap tax
20 benefits available for AFI's use. And it appears to
21 list certain tax attributes arising in ResCap
22 operations that belong to AFI, and it appears to
23 estimate a total amount, and appears to apply a
24 federal income tax rate for a -- an amount of tax
25 effected benefit.

1 JAMES ARETAKIS

2 Q. Is there anything about this chart that JSON
3 appears to you to be incorrect based on your review? Objection
32:2-11
Irrelevant

4 MR. MCKANE: Objection to form. (FRE 401,
402)

5 Foundation.

6 THE WITNESS: The line that says less
7 estimated amount of cancellation of debt
8 income, I wouldn't find the number incorrect so
9 much as the description. Upon further review,
10 we don't think there would be something called
11 cancellation of debt income for tax purposes.

12 BY MR. PERRY:

13 Q. And what would you -- what would you call
14 it?

15 A. I'd call it gain or loss on an exchange.

16 Q. And for purposes of calculating available
17 tax attributes for Ally, whether one calls it gain
18 or loss on an exchange or cancellation of debt
19 income, would that number be reflected in this
20 calculation in the manner that it is in footnote
21 1812?

22 MR. MCKANE: Objection to form. Vague.

23 THE WITNESS: I don't know.

24 BY MR. PERRY:

25 Q. And when -- at what point in time did Ally

Plaintiff's Objection
032:25 – 033:18 Irrelevant
(FRE 401, 402),
inadmissible hearsay (FRE
802)

1 JAMES ARETAKIS

2 determine that the concept of cancellation of debt
3 income was not the right term to use in connection
4 with thinking about Ally's losses in connection with
5 the ResCap bankruptcy?

6 MR. MCKANE: Objection to form. Misstates
7 prior testimony.

8 Go ahead.

9 THE WITNESS: This summer.

10 BY MR. PERRY:

11 Q. About when?

12 A. I'll call it September.

13 Q. September of 2013?

14 A. Yes.

15 Q. What led Ally to consider whether the
16 concept of cancellation of debt income or something
17 else was the appropriate concept to use?

18 A. The progression of this case.

19 Q. And what about the progression of the case
20 caused Ally to consider the appropriate title to
21 use?

22 MR. MCKANE: Actually, on that, I'm going
23 to have to instruct you, if you can answer the
24 question without divulging attorney-client
25 privilege, do so.

1 JAMES ARETAKIS

2 THE WITNESS: Okay.

3 MR. MCKANE: But to the extent you can't
4 answer the question without divulging
5 attorney-client privilege, you can't answer the
6 question.

7 THE WITNESS: Tough one. Let me say that
8 there is my -- I developed the understanding
9 that this case may -- how do I describe it --
10 wrap up or become a taxable event -- trigger a
11 taxable event in 2013.

12 BY MR. PERRY:

13 Q. Uh-hum.

14 A. And we had not really performed the
15 requisite analysis for tax purposes, and so we
16 undertook that analysis and reached a different
17 conclusion as to the character of that item.

18 Q. Okay. And how would the character of the
19 item, that change in the character of the item --
20 strike that.

21 Would the change in the character of
22 the item result in a change in tax treatment for
23 Ally?

24 MR. MCKANE: Objection to form. Vague.

25 THE WITNESS: Let me say that the

1 JAMES ARETAKIS

2 character of the gain or loss that might be
3 triggered upon resolution of this case could be
4 something other than cancellation of debt
5 income, which is ordinary income, instead the
6 exchange treatment that -- characterization
7 might produce some capital gain or loss.

8 BY MR. PERRY:

Q. And have you calculated the amount or has the tax department calculated the impact of that change in characterization upon Ally?

A. No, it really can't be calculated at this time.

Q. At what point could one calculate it?

A. At the point we have a taxable event.

Q. And is it -- is the question whether at the point you have a taxable event there's sufficient capital gains to offset the capital losses?

A. No. I was thinking in terms of knowing the -- all the components of the gain or loss that would be knowable only at the time of that taxable event.

Q. Okay. So let me just step back and make sure I've got all of this.

1 JAMES ARETAKIS

2 If -- in a world where this loss was
3 characterized as cancellation of debt income, that
4 would be -- that's treated as ordinary loss?

5 A. Ordinary income.

6 Q. Ordinary income. Okay. Whereas a gain or
7 loss on exchange, at least a portion of the gain,
8 could be characterized as a capital gain, correct?

9 MR. MCKANE: Could you read that back.

10 - - -

11 (Whereupon, a portion of the
12 transcript was read for the record.)

13 - - -

14 MR. MCKANE: Object to form. Vague.

15 THE WITNESS: Not quite. There could be
16 actually capital loss as well even if there
17 were over on net gain in total.

18 BY MR. PERRY:

19 Q. I see. But from a tax perspective, if the
20 total was a capital gain, you know, something
21 approximating 3.9 billion --

22 A. Okay.

23 Q. Okay?

24 -- how would the tax -- your ability
25 to use -- strike that.

1 JAMES ARETAKIS

2 -- how would the impact of that gain
3 be any different from the use of an ordinary income
4 gain if you just had pure cancellation of debt
5 income?

6 A. If the exchange produced solely ordinary
7 gain, the difference between that and cancellation
8 of debt income is certain special treatment for CODI
9 that's permitted under the Internal Revenue Code, so
10 it has a different character in that sense.

11 Q. Uh-hum. And just from a 10,000-foot
12 perspective, does characterizing this particular
13 item as gain or loss on an exchange improve Ally's
14 tax position or hurt Ally's tax position?

15 MR. MCKANE: Objection to form. Vague.

16 Calls for speculation.

17 THE WITNESS: I don't know if there's an
18 overall benefit or detriment to this position.

19 BY MR. PERRY:

Q. Now, other than the characterization of the \$3.9 billion item in footnote 1812, is there anything else about the schedule that appears to you to be inaccurate?

24 A. I can't verify any of the numbers used on
25 this schedule, so I can't say if they're accurate or

1 JAMES ARETAKIS

2 inaccurate.

3 Q. My question was does anything appear to be
4 inaccurate, understanding that you're not here to
5 verify the schedule?

6 A. I'm sorry, I really can't say if it's
7 accurate or inaccurate.

8 Q. But my question is --

9 A. Does it look wrong?

10 Q. Yeah, does it look wrong?

11 MR. MCKANE: Objection to form. It's
12 asked and answered.

13 THE WITNESS: I'm not familiar with these
14 numbers.

15 BY MR. PERRY:

16 Q. And who from Alley would be familiar with
17 these numbers?

18 A. I don't know where these numbers came
19 from.

20 Q. And similarly, you don't know who prepared
21 the chart, which I believe we marked as Aretakis
22 Exhibit 4, correct?

23 A. I only speculate.

24 - - -

25 (Whereupon, Exhibit 6 was

Plaintiff's Objection
038:25 - 039:20
Irrelevant (FRE 401,
402), inadmissible
hearsay (FRE 802)

1 JAMES ARETAKIS

2 marked for identification.)

3 - - -

4 BY MR. PERRY:

5 Q. Before you is Aretakis Exhibit 6.

6 Can you identify this document?

7 A. It's a document prepared in June of this
8 year by Sean Rohlig, and it describes both the book
9 and tax treatment of the proposed bankruptcy
10 settlement.

11 Q. And if you flip to page six of the
12 document, right before the blue separator sheet --

13 A. Uh-hum.

14 Q. -- there's a tax sign off --

15 A. Yes.

16 Q. -- and it reflects that you approved the
17 memo on June 28th 2013.

18 My question is did you, in fact,
19 approve Mr. Rohlig's memo in or around June of 2013?

20 A. Yes.

21 Q. And what was the purpose of the memo?

22 A. For book accounting purposes in the second
23 quarter. We were informed that there -- the
24 \$2.1 billion proposed settlement would be reflected
25 in the second quarter financial statements, and this

1 JAMES ARETAKIS

2 document describes how we would treat it for tax
3 purposes in Q2's financial statements.

4 Q. When does Q2 close for Ally?

5 A. June 30th.

6 Q. So Ally is on a calendar --

7 A. That's correct.

8 Q. If you flip to page five, there's some
9 discussion of the tax accounting --

10 A. Uh-hum.

11 Q. -- for the settlements. Can you describe
12 how -- and there's a notation there 1.35 billion. Do
13 you have any understanding of where the 1.35 billion
14 number derives from?

15 A. Is that the difference between the 2.1 as
16 proposed and the 750 already accrued?

17 Q. Yeah. Let me -- if you look -- if you'd
18 like to look, the factual background on the first
19 page --

20 A. Uh-hum.

21 Q. -- running over to the second reflects the
22 factual background for the memorandum.

23 A. Unless my math is wrong, that is, in fact,
24 the difference between the two.

25 Q. And as I understand it, the -- so there

1 JAMES ARETAKIS

2 was a 1.35 billion payment that was booked in Q2
3 2013; is that right?

4 MR. MCKANE: Objection to form.

5 THE WITNESS: No, I don't believe there
6 was any payment made in Q2.

7 BY MR. PERRY:

8 Q. Why would the deferred tax assets be
9 recorded in Q2 2013 in the absence of an actual
10 payment?

11 A. For book accounting purposes, they
12 accrued -- the cash payment, they accrued liability.
13 And it's a deferred item because it's not a current
14 tax deduction.

15 Q. And at the point that the one point -- if
16 and when the 1.35 billion is paid, does the
17 510 million become a tax deduction, a current tax
18 deduction, assuming you can use it?

19 MR. MCKANE: Objection to form.

20 THE WITNESS: At the time the 1.35 -- I'm
21 sorry --

22 BY MR. PERRY:

23 Q. Billion is paid.

24 A. -- is paid.

25 Q. Is there -- strike that.

Plaintiff's
Objection
041:08 - 17
Irrelevant (FRE
401, 402),
incomplete (FRE
106),
inadmissible
hearsay (FRE 802)

1 JAMES ARETAKIS

2 At the time the 1.35 billion is paid,
3 is there a -- does that then create a roughly
4 \$510 million tax attribute that Ally can use?

5 A. It depends. If at the time the payment is
6 made, ResCap remains wholly owned LLC subsidiary of
7 Ally, net payment is a nonevent.

8 Q. What do you mean by that?

9 A. Well, ResCap is a disregarded entity for
10 tax purposes, so it is not treated as separate from
11 Ally, and payments from Ally to ResCap are payment
12 from one pocket to another; doesn't create a taxable
13 deduction.

14 Q. Is that your understanding of how the tax
15 accounting will work if the particular settlement
16 between Ally and the debtors in the ResCap case is
17 approved?

18 MR. MCKANE: Objection to form.

19 THE WITNESS: Help me out with that one?

20 BY MR. PERRY:

21 Q. Okay. Assume the plan of reorganization
22 is confirmed, there's a payment of \$2.1 billion from
23 Ally to ResCap.

Plaintiff's Objection
042:21 – 043:18 Irrelevant (FRE 401,
402), inadmissible hearsay (FRE 802)

24 A. Uh-hum.

25 Q. The Aretakis Deposition Exhibit 6 at least

1

JAMES ARETAKIS

2 contemplates that there would be a corresponding tax
3 attribute created by that payment. Will that, in
4 fact, be a usable tax attribute based on what you
5 know of the settlement proposed in the bankruptcy
6 case?

7 MR. MCKANE: Object to form. Vague.

8 THE WITNESS: Let me say the payment by
9 itself if it occurs while ResCap is owned by
10 Ally, as I said, is not an event. Taxable
11 event won't occur until something creates a
12 taxable event such as the cancellation of
13 Ally's interest in ResCap.

14 BY MR. PERRY:

15 Q. And the -- it's contemplated currently
16 that there will be a cancellation of Ally's interest
17 in ResCap, correct?

18 A. Correct.

19 Q. So is it correct that for every dollar of
20 settlement consideration paid there will be a tax
21 attribute of roughly 35 percent created in favor of
22 Ally?

23 MR. MCKANE: Objection to form.

24 THE WITNESS: Not exactly. The exchange
25 treatment I referred to earlier will be the tax

1

JAMES ARETAKIS

2

event, and that will be an exchange of all the
assets we call ResCap assets in exchange for
release of all liabilities we're calling ResCap
liabilities.

6

For tax purposes, those are all Ally
assets and they're all Ally liabilities. That
deemed exchange will create a taxable gain or
loss. The cash contributed is one -- but one
component of that calculation.

11

BY MR. PERRY:

12

Q. And what is that calculation right now,
what is the expected taxable gain or loss as a
result of this case, the conclusion of this case?

15

MR. MCKANE: Objection. Asked and
answered.

17

BY MR. PERRY:

18

Q. You can answer.

19

A. Okay. I'm sorry, you threw me off.

20

Can you read that back?

21

- - -

22

(Whereupon, a portion of the
transcript was read for the record.)

24

- - -

25

THE WITNESS: It's somewhat impossible to

1 JAMES ARETAKIS

2 say. The -- we -- we have a good understanding
3 of the assets that we would be giving up and
4 their tax basis.

5 The liabilities relieved, which are the
6 deemed proceeds of that exchange, are unknown
7 at this time because we don't know what
8 liabilities the bankruptcy court will
9 acknowledge claims against ResCap, and we don't
10 know the extent to which those liabilities are
11 fixed and determinable for tax purposes.

12 BY MR. PERRY:

13 Q. Have you estimated -- has Ally estimated
14 the amount of liabilities it anticipates will be
15 relieved as part of the bankruptcy case?

16 A. No.

17 Q. What is the tax basis of the assets that
18 are being given?

19 A. I couldn't tell you the number. I know it
20 exceeds the book basis.

21 Q. And is there any analysis, a spreadsheet
22 or a memo, that analyzes the bottom line anticipated
23 tax effect of the conclusion of the ResCap
24 bankruptcy?

25 A. Not that I'm aware of.

1 JAMES ARETAKIS

2 Q. And do you know why no such memo has been
3 prepared?

4 A. Because we don't know what the liabilities
5 will be. We don't know what will be fixed and
6 determinable on that termination date.

7 Q. Can you go back to Aretakis 3. I think
8 it's the footnote 1812 document.

9 A. Uh-hum.

10 Q. Do you see in this document there's a tax
11 liability figure of 10.1 billion; do you see that?

12 Is that the figure that you're
13 testifying is unknowable at this point in time from
14 Ally's perspective?

15 A. Yes.

16 Q. You don't believe there are any internal
17 Ally documents that estimate the amount of that tax
18 liability figure, correct?

19 A. Not to my knowledge.

20 - - -

21 (Whereupon, Exhibit 7 was

22 marked for identification.)

Plaintiff's Objection
046:24 - 048:12 Inadmissible hearsay
(FRE 802), irrelevant (FRE 401, 402), lack
of personal knowledge (FRE 602), lack of
foundation (FRE 602, 901, 903),
incomplete (FRE 106)

23 - - -

24 BY MR. PERRY:

25 Q. Before you is Aretakis Deposition Exhibit

1 JAMES ARETAKIS

2 7.

3 This is similar to the other
4 spreadsheet we looked at. This is the spreadsheet
5 that's cited in the examiner's report as being the
6 source of the \$10.1 billion number that we just went
7 through. Is this a -- are you -- can you identify
8 the spreadsheet?

9 A. It appears to be a tax basis balance
10 sheet.

11 Q. And do you know whether Ally maintains a
12 tax basis balance sheet for the ResCap business?

13 A. To my knowledge, we don't regularly
14 produce them on a normal cadence. We produce them
15 as needed. It's a bit of work as you can see.

16 Q. Sure. Do you know whether a tax
17 balance -- basis balance sheet has been prepared
18 since December 31st 2012?

19 A. I don't know that one has been prepared
20 since then.

21 Q. Did you participate in the preparation of
22 the tax basis balance sheet before you as Aretakis
23 Deposition Exhibit 7?

24 A. No.

25 Q. Do you know who prepared Aretakis

1 JAMES ARETAKIS

2 Deposition Exhibit 7?

3 A. I could speculate.

4 Q. There's nothing about the form of the
5 document where you say that's Sean's document or
6 something like that?

7 A. No.

8 Q. And at least this tax basis balance sheet
9 reflects total liabilities of roughly \$10.1 billion,
10 right?

11 A. Right, as of 12/31/12.

12 Q. What are the items that would change
13 between 12/31/12 and today on the tax basis balance
14 sheet at least with respect to total liabilities?

15 MR. MCKANE: Objection to form.

16 Overbroad.

17 THE WITNESS: Let me explain to you what I
18 expect to happen and why.

19 As of the last balance sheet I looked at
20 for ResCap, which was June 30th, it showed an
21 insolvency that was less than \$2.1 billion. So
22 I concluded that if Ally, in fact, paid
23 \$2.1 billion and ResCap became solvent, that's
24 somewhat contrary to what we expect to happen
25 in the course of this case.

1 JAMES ARETAKIS

2 We expect to have many more liabilities
3 asserted, and not everyone will be satisfied in
4 full. Those liabilities to be asserted are not
5 reflected on this tax basis balance sheet.

6 I believe, I understand that they're still
7 not reflected in the general ledger. And so
8 when those facts become clearer, then I will
9 that one component of the gain loss that I
10 don't know today. That's liabilities relieved.

11 BY MR. PERRY:

12 Q. But at least in terms of -- well, let's
13 step away from liabilities relieved for a second.

14 A. Yeah.

15 Q. In terms of total liabilities, the
16 \$10.1 billion number, would you expect those to have
17 changed materially between December 31st 2012 and
18 now?

19 A. Well, of course, anything that was paid
20 off would not be on the balance sheet.

21 Q. So they would be asset sales, right?

22 A. Sure.

23 Q. And then in terms of -- is the unknowable
24 number -- let's go back to 1812.

25 A. Uh-hum.

1 JAMES ARETAKIS

2 Q. Do you see there's a line item less
3 creditor's expected recovery?

4 A. Yes.

5 Q. Is that the unknowable number from Ally's
6 perspective that will prevent you from doing with
7 any certainty the calculation that's reflected here
8 in 1812?

9 MR. MCKANE: Objection to form.

10 Foundation.

11 THE WITNESS: It's not the creditor's
12 expected recovery that will drive this
13 calculation; it's the total amount of the fixed
14 and determinable claim.

15 BY MR. PERRY:

16 Q. Okay.

17 A. This expect to recovery to me indicates
18 what they expect to -- expect to recover in terms of
19 proceeds from the bankruptcies. It's a slightly
20 different concept.

21 Q. I see. So the number -- the tax liability
22 number, so liabilities for tax book purposes, will
23 change once total claims are determined in the
24 bankruptcy; is that your testimony?

25 MR. MCKANE: Objection to form.

1 JAMES ARETAKIS

2 Foundation. Misstates testimony.

3 THE WITNESS: Yeah, you confused me with
4 the question. Help me again?

5 BY MR. PERRY:

6 Q. Okay. There's -- Ally maintains and
7 computes the total liabilities, ResCap's total
8 liabilities for tax purposes. Okay?

9 A. Okay.

10 Q. And as I understood your testimony, at the
11 conclusion of the bankruptcy that number will need
12 to change based on what?

13 MR. MCKANE: Objection to form.

14 THE WITNESS: That number will change
15 based on liabilities that the court deems to be
16 valid claims against ResCap, but only to the
17 extent that they are fixed and determinable.

18 That's a tax term of art.

19 BY MR. PERRY:

20 Q. So let's just go back to Aretakis 7.

21 Just by way of example, there's a
22 line item in here for accrued employee liability.
23 It's about halfway down.

24 A. Yup.

25 Q. There's a \$140 million number.

1 JAMES ARETAKIS

2 Is it your testimony that
3 hypothetically, as part of the bankruptcy process,
4 the court allows employee claims of 150 million,
5 this number would be updated to 150 million at that
6 time because it was fixed and determinable and you
7 would change the book value; is that the substance
8 of your testimony?

9 MR. MCKANE: Objection to form.

10 THE WITNESS: That's possible. But even
11 though in that line item, Counselor, there's a
12 timing difference. So the book number is
13 different from the tax number already. But if
14 the court said the final number shall be
15 150 million, then, yes, that would be a new
16 liability.

17 MR. PERRY: If you want to go off the
18 record to switch the tape.

19 THE VIDEOGRAPHER: The time is 3:40. We
20 are going off the record.

21 - - -

22 (Whereupon, a short recess
23 was taken.)

24 - - -

25 THE VIDEOGRAPHER: The time is 4:14.

1 JAMES ARETAKIS

2 We're back on the record.

3 BY MR. PERRY:

4 Q. So do you know as you sit here today what
5 Ally's net investment for tax purposes is in ResCap?

6 A. I don't know that number as I sit here
7 today.

8 Q. Is that a number that's knowable?

9 A. Sure.

10 Q. And who would know that number?

11 A. I'm sure the controller and others on his
12 staff.

13 Q. At the end of the day, once liabilities
14 are known and there's a taxable event in the
15 bankruptcy, is it possible that Ally will receive a
16 tax benefit in excess of \$2.1 billion?

17 MR. MCKANE: Objection to form. Vague.

18 Overbroad. Calls for speculation.

19 THE WITNESS: Is it possible, yes, it's
20 possible.

Plaintiff's
Objection
053:13-20
In
admissible
hearsay
(FRE 802),
irrelevant
(FRE 401,
402), lack
of personal
knowledge
(FRE 602),
impermissi
ble lay
opinion

21 BY MR. PERRY:

22 Q. And as you understand it, there's been
23 nothing done within Ally as far as you know to
24 estimate the tax benefit once the case has been
25 wrapped up and liabilities are known, that exercise

1 JAMES ARETAKIS

2 has not occurred as far as you know?

3 A. That exchange calculation as far as I know

4 has not been done.

5 Q. Now, I want to go back and focus on assets
6 and liability.

7 - - -

8 (Whereupon, Exhibit 8 was

9 marked for identification.) Plaintiff's Objection
10 - - -
11 BY MR. PERRY:
12 54:12-55:18 Inadmissible hearsay (FRE 802),
irrelevant (FRE 401, 402), lack of personal
knowledge (FRE 602), lack of foundation
(FRE 602, 901, 903), impermissible lay
opinion

12 Q. Before you is Aretakis Deposition Exhibit

13 8.

14 It's an email from Mr. Frucci to a
15 variety of people. I note for the record that you
16 don't appear to be included in the email. Could you
17 just take a moment to review it.

18 A. Uh-hum. Okay.

19 Q. A couple of questions. Well, do you
20 understand the basis for Mr. Frucci's conclusion
21 that over the life of ResCap from the date of filing
22 through the date of the liquidating trust ResCap
23 would generate a taxable loss of 4.17 billion?

24 A. I understand the concept that he's
25 discussing.

1 JAMES ARETAKIS

2 Q. Okay. And what's your understanding of
3 that concept?

4 A. He is expressing the, if I understand this
5 correctly, the total or net effect of -- taxable
6 effect coming from ResCap post the filing date.

7 Q. Does it in adjusting post the filing date,
8 do you understand Mr. Frucci's analysis to do
9 anything other than factor in a \$2.1 billion
10 contribution?

11 MR. MCKANE: Objection to form.

12 Foundation. Calls for speculation.

13 THE WITNESS: Mr. Frucci's last sentence
14 says ResCap will generate a taxable loss of
15 4.17 billion, which represents a tax basis
16 insolvency since the date of filing, plus the
17 2.1 billion. So he is expressing a total
18 taxable loss attributable to this liquidation.

19 BY MR. PERRY:

20 Q. If you go to the second -- well, it's the
21 schedule attached to the email.

22 Do you know Mr. Frucci uses a tax
23 basis at 5/14 of 12.7 billion; do you see that?

24 A. Yes.

25 Q. Do you know where he comes up with that

1 JAMES ARETAKIS

2 number?

3 A. 5/14, do we know what year this is,
4 5/14/11 -- I mean, excuse me, '12?

5 Q. If you look at the next page --

6 A. It seems to indicate 5/14/12, right, with
7 a filing date?

8 Q. Yeah, which is the filing date.

9 A. Yes. Okay. So I see 4.17 billion number
10 on here, yup.

11 Now your question?

12 Q. If you go back and look at the tax basis
13 balance sheet that we were reviewing as of
14 12/31/2012.

15 A. Uh-hum, right.

16 Q. You'll see the total assets are down to
17 11.3 billion.

18 A. Uh-hum.

19 Q. Do you have any understanding of what
20 could cause that level of -- that decrease in total
21 assets between May of 2012 and the conclusion of
22 2012?

23 A. If you sold assets, certainly your balance
24 sheet would shrink.

25 Q. Okay.

1 JAMES ARETAKIS

2 A. You would have to take then the proceeds
3 and reduce liabilities.

4 Q. Okay. Well, that was my next question.

5 You see assets go down from 12/7 to
6 1/13, so roughly a billion and a half. But if you
7 compare the liability movement.

8 A. Uh-hum.

9 Q. You go from 10/6 to 10/3, so only
10 300 million.

11 Do you have any explanation for the
12 difference --

13 A. I do not off the top of my head.

14 Q. Okay. Who would know?

15 A. Controller staff at ResCap and whoever
16 perhaps prepared this tax basis balance sheet.

17 Q. Now, does Mr. Frucci's analysis take into
18 account in generating the taxable loss, does his
19 analysis take into account any historical NOL's or
20 capital losses that would have been generated?

21 MR. MCKANE: Objection. Form.

22 Foundation. Calls for speculation.

23 THE WITNESS: Only if there's tax basis
24 and ResCap assets included in those attributes.

1 JAMES ARETAKIS

2 BY MR. PERRY:

3 Q. And do you --

4 A. And I would -- okay.

5 Q. Do you have any reason to believe that his
6 tax basis assets would include those attributes?

7 A. No, I don't think they do.

8 - - -

9 (Whereupon, Exhibit 9 was

10 marked for identification.)

Plaintiff's Objection
58:13-59:06 Inadmissible hearsay (FRE
802), irrelevant (FRE 401, 402), lack of
personal knowledge (FRE 602), lack of
foundation (FRE 602, 901, 903)

11 - - -

12 BY MR. PERRY:

13 Q. Before you is Aretakis Deposition Exhibit

14 9.

15 And it's an 8-K that was filed --

16 MR. MCKANE: July 31st.

17 BY MR. PERRY:

18 Q. -- July 31st. Is dated July 31st 2013.

19 I'm specifically interested in the

20 text that starts on the second page and carries over

21 to the third page. I'm directing your attention

22 to -- take a moment to review it. I'm going to

23 start asking questions about note four, but take

24 your time and look.

25 A. Okay.

1 JAMES ARETAKIS

2 Q. There note four reflects a \$1.6 billion
3 charge resulting from Ally's comprehensive
4 settlement agreement, the ResCap Chapter 11
5 bankruptcy case; do you see that?

6 A. Uh-hum.

7 Q. What is the \$1.6 billion, where does that
8 come from?

9 A. I could guess for you.

10 Q. Well, it's -- there was a \$2.1 billion
11 payment, right?

12 A. Right.

13 MR. MCKANE: An agreement to pay 2.1
14 billion.

15 BY MR. PERRY:

Plaintiffs Objection
59:18-60:02

16 Q. An agreement to pay \$2.1 billion.

Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602)

17 A. Uh-hum.

18 Q. As I understand it, some of that was paid
19 by insurance?

20 A. Well, let's take a look first. This is --
21 the 1.6 billion charge would have been based on -- I
22 believe the increment of that 2.1 over the 750 that
23 was already accrued, plus other items that were
24 discussed in Mr. Rohlig's memo.

25 So it's probably the sum of 1.35 and

1 JAMES ARETAKIS

2 some other items. Feels right to me.

3 Q. Do you know what the other items are based
4 on your review of Mr. Rohlig's memo?

5 A. Well, Mr. Rohlig's memo talks about some
6 insurance recoveries and mentions some increases to
7 litigation reserve. I don't know if that gets you
8 to 1.6.

9 Q. Okay. Why would the insurance recoveries
10 be included in the charge?

11 A. I don't know the origin of this 1.6 number
12 here. I'm speculating, so I can't tell you if it's
13 in there or not.

14 MR. MCKANE: I'd ask you not to speculate.

15 THE WITNESS: Okay.

16 BY MR. PERRY:

17 Q. Okay. But in any event, there was a 1.6 Plaintiff's
18 billion charge taken in the second quarter of 2013 Objection
19 in connection with the settlement, correct? 060:17 –
063:12 Inadmissible
hearsay (FRE
802),
irrelevant
(FRE 401,
402), lack of
personal
knowledge
(FRE 602),
lack of
foundation
(FRE 602, 901,
903),

20 A. Appears to be from this document.

21 Q. And as between the \$1.35 billion (FRE 401,
22 incremental payment and the \$1.6 billion number, you 402), lack of
23 don't know and are unable to deduce what makes up personal
24 the difference between 135 and 1.6, right? knowledge
(FRE 602, 901,
903),

25 A. As I sit here, I don't know the answer to impermissible
lay opinion

1 JAMES ARETAKIS

2 that question.

3 Q. And had Ally previously taken a charge for
4 the \$750 million settlement?

5 A. Uh-hum.

6 Q. You got to answer yes or no.

7 A. Oh, I'm sorry.

8 Had they, yes, they did.

9 Q. Okay. And you see the text here says this
10 was offset by approximately 600 million in tax
11 benefits related to the settlement charge and the
12 sales of Ally's international businesses; do you see
13 that?

14 A. Yes.

15 Q. Is the \$510 million tax benefit identified
16 in Mr. Rohlig's memo part of the \$600 million in
17 offset identified in the 8-K that's before you now?

18 A. It would appear to be.

19 Q. And the way Mr. Rohlig got to the
20 \$510 million benefit is he simply took the
21 \$1.35 billion contemplated payment and multiplied it
22 by the .3782 tax rate at the -- that was operable at
23 the time, correct?

24 A. Correct.

25 Q. Okay. Just out of curiosity, why does he

1 JAMES ARETAKIS

2 use 37.82 rather than 35 percent?

3 A. Thirty-five was federal only. The balance
4 would be state and local.

5 Q. Okay. And do you know whether a similar
6 tax asset was recorded with respect to the \$750
7 million payment?

8 A. Yes.

9 Q. Why don't we go back to Mr. Rohlig's
10 memorandum. If you go to page three, there's a
11 section heading that reads tax basis and ResCap net
12 assets about halfway down.

13 A. Yeah.

14 Q. It says on the filing date Ally's tax
15 basis in ResCap's assets exceeded ResCap's
16 liabilities that were recognized for tax purposes by
17 2.07 billion?

18 A. Right.

19 Q. And that's consistent with Mr. Frucci's
20 analysis that we were looking at earlier, correct?

21 A. Yes.

22 Q. And just for the record, Mr. Frucci's
23 analysis is Aretakis Deposition Exhibit --

24 A. Eight.

25 Q. Okay. And it says since the filing date

1 JAMES ARETAKIS

2 this net tax basis has been reduced for both
3 deductible and nondeductible expenses incurred at
4 ResCap, but the net amount is estimated to remain
5 significantly positive at this time.

6 Do you believe that to be a correct
7 statement?

8 MR. MCKANE: Objection to form.

9 THE WITNESS: That amount is expected to
10 remain significantly positive, at this time,
11 yes, the time of the writing of this
12 memorandum, that's correct.

13 BY MR. PERRY:

14 Q. Okay. Fair enough. If you go down to the
15 next paragraph, the second sentence.

16 A. Uh-hum.

17 Q. Ally expects to receive no cash proceeds,
18 but expects to be released from all ResCap
19 liabilities upon the transfer to liquidating trust.
20 If ResCap is tax insolvent upon the transfer date,
21 Ally will record a net loss on the transfer equal to
22 its net tax basis; do you see that?

23 A. Yes.

24 Q. Do you believe that to be an accurate
25 statement?

1 JAMES ARETAKIS

2 A. That is an accurate statement.

3 Q. It says if on the other hand -- well,
4 strike that.

5 If ResCap insolvent tax insolvent on
6 the transfer date, the excess of fix liabilities
7 over asset tax basis will generate a net taxable
8 income.

9 Do you believe that to be accurate?

10 A. I believe that to be accurate.

11 Q. And then it says the net tax loss or net
12 taxable income could be a combination of gain or
13 loss on the disposition of assets and cancellation
14 of debt income.

15 Do you believe that to be accurate?

16 A. I think subsequent review as concluded
17 that -- that last clause and cancellation of debt
18 income will be -- will not be the case. So that --
19 that statement is not entirely accurate.

20 Q. So the view now after subsequently review
21 is that the net tax loss or net taxable income would
22 be a gain or a loss on the disposition of assets; is
23 that right?

24 A. That is correct.

25 Q. And focusing your attention on the next

1 JAMES ARETAKIS

2 paragraph.

3 A. Uh-hum.

4 Q. I take it the reference -- based on your
5 subsequent review, the references to C-O-D-I are
6 incorrect there?

7 A. That is a correct statement.

8 Q. But everything else in that paragraph is
9 correct?

10 MR. MCKANE: Objection to form. Overly
11 broad.

12 THE WITNESS: An increase to tax basis, I
13 think that statement misses one other
14 possibility.

15 BY MR. PERRY:

16 Q. What's the other possibility?

17 A. The increase of tax basis from the cash
18 settlement amount will either increase a tax loss or
19 decrease a tax gain.

20 Q. Let's go back to the footnote 1812 on the
21 table contained therein.

22 Other than the -- do you understand
23 this table to estimate the amount of tax benefit
24 received by Ally in connection with the ResCap
25 bankruptcy to be \$1.77 billion?

1 JAMES ARETAKIS

2 MR. MCKANE: Objection to form.

3 Foundation. Calls for speculation.

4 THE WITNESS: That's what it purports to
5 show.

6 BY MR. PERRY:

7 Q. And of course, it assumes a contribution
8 of 750 million, correct?

9 A. I see that number on here.

JSON
Objection
66:10-67:13
Irrelevant
(FRE 401,
402)

10 Q. And you would agree with me that if one
11 adjusted the analysis to include the incremental
12 1.35 billion that Ally ultimately agreed to pay, the
13 tax benefit goes up, correct?

14 MR. MCKANE: Objection to form. Calls for
15 speculation.

16 THE WITNESS: Not quite. Can we --
17 throughout this discussion, we've talked about
18 ResCap assets and ResCap tax benefits, and I
19 think it might be appropriate here to talk --
20 to mention once again that all these assets and
21 such are Ally's tax assets.

22 But in this case, there seems to be a
23 combination of ResCap losses that are generated
24 at ResCap and a settlement amount that's paid
25 by Ally, and I suppose I wouldn't consider

1 JAMES ARETAKIS

2 those to be combinable items.

3 BY MR. PERRY:

4 Q. Okay.

5 A. So I -- I guess I would disagree with your
6 statement.

7 Q. Okay. Well, so you could do -- would it
8 satisfy your objection if you backed out the 750
9 from this analysis and analyzed the tax benefit not
10 including the settlement payment?

11 A. I can't say even by pulling that out that
12 I'm affirming this calculation.

13 Q. I don't want you to affirm it.

14 A. Yeah.

15 Q. I'm trying to get a sense of the potential
16 tax benefit from Ally's perspective as a result of
17 its investment in ResCap, the losses created
18 therefrom --

19 A. Uh-hum.

20 Q. -- as part of the bankruptcy process --

21 A. Uh-hum.

22 Q. -- and also the tax benefits created as
23 part of the settlement payment that was part of the
24 bankruptcy process at least according to the --

25 A. All of those items go into a tax gain or

1 JAMES ARETAKIS

2 loss calculation.

3 Q. Okay.

4 A. I'm with you there.

5 Q. And your -- as I understood your objection
6 to, you know, either my line of questioning or the
7 table is you would analyze the tax benefits
8 attributed to the gain or loss on the ResCap
9 investment separately from the tax benefits created
10 by the settlement payment, right?

11 MR. MCKANE: I'm going to object.

12 Misstates his prior testimony.

13 MR. PERRY: I'm just trying to get a sense
14 of what you're saying.

15 MR. MCKANE: Go ahead and try to do it
16 again.

17 THE WITNESS: Would I analyze them
18 separately? No, not really. I would treat
19 them -- all of this as ResCap assets -- excuse
20 me, misstated that -- Ally assets and Ally
21 liabilities.

22 I thought you were trying to identify
23 certain -- what we were calling ResCap assets
24 and ResCap liabilities.

25

1 JAMES ARETAKIS

2 BY MR. PERRY:

JSON Objection
69:3-17
Irrelevant (FRE
401, 402)

3 Q. I understand the position you're
4 articulating is in effect these were never ResCap's
5 tax attributes. That's Ally's position, right?

6 A. That is true.

7 Q. Okay. And if one -- and the examiner's
8 analysis, you would agree with me at least
9 identifies and contemplates the tax attributes as
10 belonging to ResCap in some way, shape or form,
11 right?

12 MR. MCKANE: I'm going to object to that.

13 That misstates the examiner's report.

14 BY MR. PERRY:

15 Q. Answer the question.

16 A. I don't know what the examiner concluded
17 with respect to who owns these attributes.

18 Q. Okay. So -- but in terms of the tax
19 benefits that run to Ally as a result of the
20 conclusion of the ResCap bankruptcy process, there's
21 in your view two types of tax benefits, there's the
22 benefits that derive out of the \$2.1 billion
23 settlement payment, right?

24 MR. MCKANE: I'm going to object.

25 Misstates his prior testimony.

1 JAMES ARETAKIS

2 Plaintiff's Objection

2 BY MR. PERRY: 70:03-71:20 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), impermissible lay opinion

3 Q. Is it fair to say you consider it all as
4 part of -- in the same way that the examiner built
5 in the \$750 million contribution to his analysis of
6 the tax benefit, is that in your view an appropriate
7 thing -- way to think about the ultimate tax benefit
8 to Ally as a result of these cases?

9 A. Ally's ultimate taxable income or loss in
10 this case will reflect that \$2.1 billion
11 contributed, yes, clearly.

12 Q. So this is an objection that my client
13 filed to the original disclosure statement in the
14 case. And if you look at the second to last page,
15 you'll see that there's an analysis that simply
16 rolls forward the examiner's chart in 1812 and adds
17 to it the \$1.35 billion supplemental settlement
18 payment; do you see that?

19 A. Uh-hum.

20 - - -

21 (Whereupon, Exhibit 10 was
22 marked for identification.)

23 - - -

24 MR. PERRY: That's Aretakis 10 for the
25 record.

1 JAMES ARETAKIS

2 BY MR. PERRY:

3 Q. Now, at some point in time, you, Ally,
4 will be able to do precisely the same analysis
5 that's set forth in Aretakis 10, correct?

6 A. Uh-hum, that's correct.

7 Q. And on Aretakis 10, what are the items on
8 here that are unknown at this point in time that
9 make it impossible for you to -- to determine with
10 precision the final tax benefit to AFI as a result
11 of the ResCap bankruptcy?

12 A. Well, first let me point out that we
13 wouldn't do precisely this calculation because it
14 includes cancellation of debt income that doesn't
15 reflect the exchange I've been describing.

16 Q. Right.

17 A. But one of the items on here that is used
18 in the calculation is the very first line, ResCap
19 tax liabilities. That's an item I will not know
20 until that liquidation date.

21 Q. Okay. Anything else on here you will not
22 know until some point later in the case or after the
23 case is done?

24 A. Well, I see that creditor's expected
25 recovery line I -- I would say we wouldn't know it,

1 JAMES ARETAKIS

2 but I think under my exchange calculation, we
3 wouldn't care.

4 Also, tax basis and ResCap assets
5 will of course change, and I note that the NOL and
6 capital loss numbers as of 12/31/12, things change.

7 Q. Have those numbers been updated in 2013?

8 A. Yeah, we -- they would be updated on a
9 quarterly basis.

10 Q. And do you have any idea as you sit here
11 today --

12 A. I'm sorry, I do not.

13 Q. -- what those numbers are?

14 MR. MCKANE: Can you wait until he
15 finishes his question before you answer.

16 THE WITNESS: Okay.

17 BY MR. PERRY:

18 Q. Do you believe Ally would have
19 September 30 numbers at this point in time for the
20 NOL's generated and capital losses generated?

21 A. I expect we have estimates. We don't
22 compute with such precision.

23 Q. Would you expect those numbers to have
24 changed materially during the course of 2013?

25 A. I'm not familiar with ResCap's operating

1 JAMES ARETAKIS

2 results in 2013.

3 Q. And then on the -- you testified earlier
4 you wouldn't care about the creditor's expected
5 recovery. Is that because of the change in thinking
6 about cancellation of debt income or is there some
7 other reason that in performing this type of
8 calculation you wouldn't care about the creditor's
9 expected recovery?

10 A. I don't care because CODI -- that's
11 relevant for the CODI calculation.

12 Q. And how would you perform the calculation
13 under the updated concept, which is refresh my
14 recollection, it's not CODI, it's called -- what are
15 you calling it now?

16 A. Gain or loss on the exchange. I would --
17 just to repeat your question, you want to know how I
18 calculate that gain or loss again?

19 Q. Yeah.

20 A. It's the exchange of assets --

21 THE VIDEOGRAPHER: The time is 4:58. We
22 are going off the record.

23 - - -

24 (Whereupon, a short recess
25 was taken.)

1 JAMES ARETAKIS

2 - - -

3 THE VIDEOGRAPHER: The time is 5:11 p.m.

4 We are back on the record.

5 BY MR. PERRY:

6 Q. So, when we broke, Mr. Aretakis, we were Plaintiff's
7 talking about the conclusions that you and your Objection
74:06-77:08
8 colleagues had drawn about there not being Inadmissible
9 cancellation of debt income in this case. hearsay (FRE
802),
irrelevant
(FRE 401,
402), lack of
personal
knowledge
(FRE 602),
lack of
foundation
(FRE 602,
901, 903),
impermissible
lay opinion

10 Is -- and as I understand it, you
11 would simply treat for tax purposes, you would
12 simply calculate a net gain or loss on the ResCap
13 assets, correct?

14 A. In ResCap liabilities.

15 Q. Okay. And is that because you believe
16 that the ResCap debt being satisfied is nonrecourse
17 debt for tax purposes?

18 A. That is correct.

19 Q. Okay. So, if nonrecourse debt is
20 satisfied by transferring the assets that secure
21 that debt to the creditors, there would then be a
22 net gain or loss equal to the difference between the
23 amount of liabilities and the basis of the assets,
24 right?

25 A. The amount of the liabilities are

1 JAMES ARETAKIS

2 recognized for tax purposes fixed and determinable
3 and the tax basis of the assets.

4 Q. Okay. So back to Aretakis 10 and the
5 chart. I just want to try and do that particular
6 calculation without the cancellation of debt income
7 concept.

8 So am I correct that the tax basis,
9 assuming the analysis in this chart would be the
10 11.3 number, plus the 2.1?

11 A. Yeah, if we're using just for explanation
12 of the nature of the calculation tax basis and net
13 plus the 2.1.

14 Q. Okay. And then the liabilities would be
15 the 10.1 liability number, correct?

16 A. As they exist on the liquidation date.

17 Q. And so ultimately, bottom line when you
18 run that through the analysis, you come up with the
19 same numbers that you would if you use the
20 cancellation of debt income concept, right?

21 MR. MCKANE: Objection to form.

22 Foundation. Speculation.

23 THE WITNESS: Come up with the same
24 numbers?

25

1 JAMES ARETAKIS

2 BY MR. PERRY:

3 Q. Well, let me just --

4 A. Help me out?

5 Q. Let me help, okay, as best I can.

6 Do you -- using concepts of

7 cancellation of debt income, you have losses of 5.9

8 billion offset by cancellation of debt income of

9 2.5 billion, right?

10 A. Okay.

11 Q. And that equates to using rough numbers

12 3.4 billion; do you see that?

13 MR. MCKANE: If you're asking if 5.2 minus

14 3.2 equals --

15 MR. PERRY: We'll calculate it.

16 BY MR. PERRY:

17 Q. Okay. So 5.904 minus 2571 equals

18 3.33 billion.

19 A. Okay.

20 Q. Okay?

21 A. Uh-hum.

22 Q. Now, you'd agree with me that instead of

23 doing that calculation to determine the tax benefit

24 to AFI, I would simply excise the line, the 5.904

25 line and the 2571 line, and instead perform the

1 JAMES ARETAKIS

2 following calculation 11387 plus 2100, less the
3 basis of 10154, correct?

4 A. That appears to be correct.

5 Q. Okay. And just for the record, that
6 calculation gives you an output of 333, same output,
7 correct?

8 A. That seems reasonable, yes.

9 MR. PERRY: Okay. I don't have anything
10 else.

11 MR. MCKANE: I do.

12 Anyone else have questions?

13 - - -

14 E X A M I N A T I O N

15 - - -

16 BY MR. MCKANE:

17 Q. Sir, let's go back to Sean Rohlig's memo,
18 which is Aretakis 6. And I want to direct your
19 attention to the third page.

20 A. Okay.

21 Q. Do you recall counsel for the JSON asked
22 you a series of questions about portions of this
23 page?

24 A. Yes.

25 Q. All right. Let me direct you to a portion

1 JAMES ARETAKIS

2 of the page that he didn't ask you questions about.

3 Do you see the heading tax basis and

4 ResCap net assets?

5 A. Yes.

6 Q. In that first full paragraph --

7 A. Yes.

8 Q. -- I want to direct you to the last
9 sentence of that paragraph.

10 Do you see where it says it is not
11 known whether Ally will continue to be in a net tax
12 base position, open parens, tax solvent, close
13 parens, upon the transfer of assets liquidating
14 trust or ResCap's fixed liabilities would exceed the
15 tax basis in assets on the date, open parens, tax
16 insolvent, closed parens?

17 A. Yes.

18 Q. Was that statement true at that point in
19 time when the memo was authored June 19, 2013?

20 A. Yes.

21 Q. Is it true still today?

22 A. Yes.

23 Q. Why is it true?

24 A. Because I don't know what liabilities will
25 become fixed and determinable for tax purposes on

1 JAMES ARETAKIS

2 that liquidate date.

3 Q. And therefore, sir, let me direct your
4 attention back to Aretakis 10, which is the
5 objection to the Ad Hoc Group of JSN --

6 A. Uh-hum.

7 Q. -- to the disclosure statement.

8 Let's go back to the second to last
9 page for a second.

10 A. Yes.

11 Q. Do you see the line item that they were
12 using ResCap tax liabilities?

13 A. Yes.

14 Q. The amount that was used 10.154 billion,
15 do you see that amount?

16 A. Yes.

17 Q. Is that the amount that you don't know
18 yet?

19 A. That's correct.

20 Q. And how will you know that amount, how
21 will that amount of ResCap tax liabilities be
22 determined?

23 A. On that date, we will have to examine what
24 liabilities the bankruptcy court allows as claims
25 against ResCap. Some of those liabilities will be

1 JAMES ARETAKIS

2 fixed for tax purposes, and I can only -- I expect
3 that some will not be.

4 We'll have to go through all those
5 claims, see what's firm, what is not, and that's how
6 we will determine that number.

7 Q. And on what date will you be doing that
8 calculation?

9 A. It would be effective as of the date that
10 Ally's interest in ResCap is canceled.

11 Q. And, sir, the line below that, the
12 creditor's expected recovery, do you see that, sir?

13 A. Yes, I do.

14 Q. Is that a factor in your analysis at all?

15 A. No, it is not. That's irrelevant to my
16 calculation.

17 MR. MCKANE: That's all I have. Thank
18 you.

19 THE VIDEOGRAPHER: The time is 5:20. We
20 are off the record.

21 - - -

22 (Whereupon, the deposition
23 was concluded at 5:20 p.m.)

24 - - -

25

1 JAMES ARETAKIS

2 CERTIFICATE

3 I HEREBY CERTIFY that the
4 proceedings, evidence and objections are
5 contained fully and accurately in the
6 stenographic notes taken by me upon the
7 deposition of JAMES ARETAKIS taken on
8 November 6, 2013 and that this is
9 a true and correct transcript of same.

10 Date: 11/6/2013

11

12

13

14 Jennifer Miller, RPR and
15 Notary Public

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1 JAMES ARETAKIS

2 I N D E X

3 WITNESS: PAGE

4 JAMES ARETAKIS

5 BY MR. PERRY 6

6 BY MR. MCKANE 77

7 - - -

8 E X H I B I T S

9 NUMBER DESCRIPTION PAGE

10 Exhibit 1 Notice of Subpoena from 11
11 Ad Hoc Group of Junior
12 Secured Noteholders to
13 Ally Financial, Inc.

14 Exhibit 2 ResCap Deferred Inventory 15
15 As of December 31, 2012

16 Exhibit 3 Report by Arthur J. 23
17 Gonzalez

18 Exhibit 4 Ordinary and Capital 24
19 Losses Generated by ResCap

20 Exhibit 5 Form 10-K 30

21 Exhibit 6 Memorandum of June 19, 38
22 2013

23 Exhibit 7 Tax Basis Balance Sheet 46

24 Exhibit 8 Email dated 6/21/2013 54

25 Exhibit 9 Form 8-K 58

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1 JAMES ARETAKIS
2 NUMBER DESCRIPTION PAGE
3 Exhibit 10 Objection of Ad Hoc 70
4 Group of Junior Secured
5 Noteholders
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JAMES ARETAKIS

2

ERRATA SHEET

3

PAGE LINE CHANGES OR CORRECTION AND REASON

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1 JAMES ARETAKIS

2 I have inspected and read my
3 deposition as captioned above and have
4 listed all changes and corrections above,
5 along with my reasons therefore.

6

7 DATE: _____

8

9 SIGNATURE OF DEPONENT: _____

10

11 I have read the foregoing transcript
12 of my deposition and it is true, correct
13 and complete, to the best of my knowledge,
14 recollection and belief, except for the
15 corrections noted hereon and/or list of
16 corrections, if any, attached on a separate
17 sheet herewith.

18 _____

19 JAMES ARETAKIS

20

21

22 Subscribed and sworn to before me
23 this ____ day of _____, 2013.

24 _____

25 Notary Public